

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 5888-CO08-0328-006

IN THE MATTER OF:

Federated Mutual Insurance Company
121 E. Park Square
Owatonna, Minnesota 55060

Respondent.

Type of Agency Action: Enforcement

NAIC Number: 13935

FILED

SEP 08 2009

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER
DENYING RESPONDENT'S OBJECTION AND
AFFIRMING ALJ's FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

The Commissioner of the Indiana Department of Insurance, Carol Cutter, having read and reviewed the Administrative Law Judge (ALJ) Doug Webber's Findings of Fact, Conclusions of Law, and Recommended Order and Federated Mutual Insurance Company's Objection To Recommended Order Granting Department's Motion For Summary Judgment In Part, and now being duly advised in the premises **DENIES** said Objection pursuant to Indiana Code 4-21.5-3-29, and as ultimate authority in this case issues this Final Order **AFFIRMING** ALJ Webber's Findings of Fact, Conclusions of Law, and Recommended Order of July 10, 2009.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner incorporates ALJ Webber's Findings of Fact and Conclusions of Law in this Final Order.


ORDER

The Commissioner now Orders:

1. As a matter of law, Ind. Code § 27-15-8-19 and Ind. Code § 27-15-8-33 are saved from preemption by the ERISA statute and when applied to the non-contested facts of this case provide the exclusive remedy for fraud or misrepresentation by Miller or his representative; therefore, summary judgment is granted to the Department on Counts I and II of the Statement of Charges.
2. As a matter of law, there is no evidence that Federated engaged in unfair claims handling or post claims underwriting, and therefore Federated is granted summary judgment on Count III of the Statement of Charges; the portion of Count III that relates to the correct interpretation of Federated's policy with regard to rescission is moot as the decision on Count I and II render Ind. Code § 27-15-8-19 and Ind. Code § 27-15-8-33 controlling.
3. No genuine issue of material fact exists to support the charge that Federated's organizational structure materially impacted Miller's claim because the parties agreed that the Medallion policy was a small group health insurance policy that qualified as employee benefit plan under 29 U.S.C. § 1144(a); therefore, summary judgment is granted to Federated on Count IV.

4. Federated shall pay the Millers' medical expenses in the amount of \$264,463.87 minus a credit of \$7,919.20 for premium returned to the Millers for a total of \$256,544.67.

ALL OF WHICH IS ORDERED by the Commissioner this 3^d day of September, 2009.



Carol Cutter
Commissioner, IDOI

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